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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192093
Party	Plaintiff Pirelli Tyre S.p.A.
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Attachments	Joint Motion to Consolidate.pdf (6 pages)(16622 bytes)

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<p>PIRELLI TYRE S.P.A.</p> <p style="text-align: center;">Opposer</p> <p>v.</p> <p>ZERO MOTORCYCLES, INC.,</p> <p style="text-align: center;">Applicant.</p>	<p>Consolidated Opposition No. 91192093</p> <p>Serial No. 77/616233 Mark: ZERO X Filed: November 17, 2008 Published: June 2, 2009</p> <p>Serial No. 77/665628 Mark: ZERO SS Filed: February 6, 2009 Published: June 2, 2009</p> <p>Serial No. 77/665629 Mark: ZERO S Filed: February 6, 2009 Published: June 2, 2009</p>
<p>PIRELLI TYRE S.P.A. AND PIRELLI & C. S.P.A.,</p> <p style="text-align: center;">Opposers</p> <p>v.</p> <p>ZERO MOTORCYCLES, INC.,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No. 91192475</p> <p>Serial No. 77/793886 Mark: ZERO DS Filed: July 30, 2009 Published: October 27, 2009</p>
<p>PIRELLI TYRE S.P.A. AND PIRELLI & C. S.p.a.,</p> <p style="text-align: center;">v.</p> <p>ZERO MOTORCYCLES, INC., Registrant.</p>	<p>Cancellation No. 92051520</p> <p>Registration No. 3661976 Mark: ZERO Issue Date: July 28, 2009</p>

JOINT MOTION TO CONSOLIDATE

Opposers and Petitioners Pirelli Tyre S.p.A. and Pirelli & C. S.p.A (collectively “Pirelli”) and Applicant/Registrant Zero Motorcycles, Inc. (“Applicant”), through their

undersigned counsel, hereby jointly move to consolidate Opposition Nos. 91192093 and 91192475 and Cancellation No. 92051520.

Fed. R. Civ. P. 42(a), as made applicable by Trademark Rule 2.116(a), provides that when actions involving a common question of law and fact are pending before the Board, it may order all the actions consolidated. In determining whether to consolidate cases, the Board weighs the savings in time, effort, and expense that may be gained from consolidation against any prejudice or inconvenience that may be caused by consolidation. TBMP § 511 and cases cited therein.

Opposition No. 91192093 is a consolidated opposition involving application Serial No. 77616233 for ZERO X, Serial No. 77665628 for ZERO SS, and Serial No. 77665629 for ZERO S, all owned by Applicant Zero Motorcycles, Inc. Each of the applications includes the goods “electric motorcycles; motorcycles and structural parts therefor”, and Application Serial No. 77616233 for ZERO X also includes “motorcycles for motocross.”

Opposition No. 91192475 involves application Serial No. 77793886 for ZERO DS and also owned by Applicant Zero Motorcycles, Inc. Like the ZERO X application it is for “electric motorcycles; motorcycles and structural parts therefor; motorcycles for motocross.”

Cancellation No. 92051520 involves Registration No. 3661976 for the ZERO, also owned by Applicant Zero Motorcycles, Inc. The goods of the registration are essentially identical to those of the applications subject to both Oppositions, they are “electric vehicles, namely motorcycles.”

As grounds for opposition in both Opposition No. 91192475 and consolidated Opposition No. 91192093, and as grounds for cancellation in Cancellation No. 92051520, Pirelli has alleged likelihood of confusion based on Pirelli's registered and common law rights in their ZERO marks, including but not limited to Reg. Nos. 2749340, 1625883, 2847159, 2783614, 3038910, and 2337503 for their ZERO formative marks.

Consolidation is appropriate because both oppositions and the cancellation involve the common factual and legal issues. In all three proceedings, Applicant has filed an Answer, including the identical affirmative defenses and allegations. In the cancellation proceeding, Applicant has asserted a counterclaim for cancellation of Pirelli's Registration No. 3661976 for the ZERO mark. Pirelli has answered that counterclaim. Further, all three proceedings are still in the very early stages. In Opposition No. 91192475 discovery has not yet opened and will not until January 7, 2010. In consolidated Opposition No. 91192093, discovery was to open last week but the parties have agreed, based upon this joint motion, to move the discovery opening date, as well as all the other dates, by approximately 30 days in order to coordinate the deadlines in both of these proceedings. And in Cancellation No. 92051520, discovery is scheduled to open on January 10, 2010. Under the circumstances, consolidation of the oppositions and the cancellation will reduce the number of filings before the Board, and assist both the Board and the parties in maintaining all of the cases on the same schedule.

In addition, given the similarity of the marks at issue, the similar grounds for opposition, much of the discovery and evidence at trial will likely be the same in all of the cases, in the event that a settlement is not reached. If proceedings move forward,

the parties are likely to present the same arguments and evidence in all proceedings.

Absent consolidation, both parties will be compelled to conduct piecemeal discovery and prosecution of the three separate proceedings. Accordingly, consolidation of these cases will result in a significant savings of time and resources for both the parties and the Board. Moreover, both of the proceedings are essentially at the same stage of pre-discovery.

Accordingly, Pirelli and Applicant respectfully jointly, request that the Board grant thier Joint Motion to Consolidate Opposition Nos. 91192073 and 91192475 and Cancellation No. 92051520. Further, Opposers and Applicant respectfully requests that the Board reset the dates for the newly consolidated proceedings as indicated below, which are the deadlines currently set in Cancellation No. 92051520:

Deadline for Discovery Conference	January 10, 2010
Discovery Opens	January 10, 2010
Initial Disclosures Due	February 9, 2010
Expert Disclosures Due	June 9, 2010
Discovery Closes	July 9, 2010
Plaintiff's Pretrial Disclosures	August 23, 2010
30-day testimony period for Plaintiff's testimony to close	October 7, 2010
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	October 22, 2010
30-day testimony period for Defendant and Plaintiff in the counterclaim to close	December 6, 2010
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	December 21, 2010
30-day testimony period for defendant in the counterclaim and rebuttal testimony	February 4, 2011

for plaintiff to close

Counterclaim Plaintiff's Rebuttal
Disclosures Due

February 19, 2011

15-day rebuttal period for plaintiff in
the counterclaim to close
Brief for plaintiff due

March 21, 2011

May 20, 2011

Brief for defendant and plaintiff in the
counterclaim due

June 19, 2011

Brief for defendant in the counterclaim
and reply brief, if any, for plaintiff
due

July 19, 2011

Reply brief, if any, for plaintiff in the
counterclaim due

August 3, 2011

These requests are made in good faith and are not for the purpose of mere
delay.

Respectfully submitted,

Dated: December 15, 2009

By: /s/Virginia L. Carron
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing JOINT MOTION TO CONSOLIDATE was served by agreement, by email transmission this 15th day of December 2009, upon counsel for Applicant:

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/s/Virginia L. Carron